



STATE OF DELAWARE

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April 23, 2015

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Toni Loper, Public Utility Analyst

SUBJECT: IN THE MATTER OF THE APPLICATION OF AGERA ENERGY, LLC FOR A CERTIFICATE TO PROVIDE ELECTRIC SUPPLY SERVICES WITHIN THE STATE OF DELAWARE (SUBMITTED OCTOBER 27, 2014; FILED APRIL 22, 2015) - PSC DOCKET No. 14-0506

Background

On October 27, 2014, Agera Energy, LLC ("Agera" or the "Company") submitted an application (the "Application") with the Delaware Public Service Commission ("Commission") for an Electric Supplier Certificate ("ESC") to act as a Supplier in the State of Delaware pursuant to §1012 of the Electric Utility Restructuring Act of 1999, 26 *Del. C.* §1001 - §1020 (the "Act") and 26 *Del. Admin. C.* §3001, the Commission's Rules for Certification and Regulation of Electric Suppliers (the "Supplier Rules").¹

Application

The Company's original filing was submitted on October 27, 2014 but the submitted Application did not meet the minimum filing requirements ("MFRs"). Staff requested the Company file additional documentation where it was requested that the company provide the following information: a) a copy of the Certificate of Good Standing issued by the Delaware Secretary of State, b) consent to jurisdiction of Delaware courts, c) an original Bond with Surety, and d) a signed, sworn verification letter as required. Follow up documentation was received, but upon further review Staff requested that the Company supply an affidavit of publication which was omitted from the supplemental filing. Staff received supplemental filings from the Applicant to address all deficiencies on February 20, 2015 and April 22, 2015 and the receipt of this documentation satisfied the MFRs.

Review and Analysis

Authority to do Business in Delaware

The Company is a limited liability company formed under the laws of Delaware and has provided proof issued by the Delaware Secretary of State that it is legally authorized and qualified to do business in the State of Delaware.

¹ Unless otherwise noted, all references to capitalized terms are set forth in the Act and/or the Supplier Rules.

Resident Agent

The Company supplied the contact information for a Delaware Registered Agent listed in the Application as VCORP Services LLC, Wilmington, DE.

Performance Bonds

The Company currently does not have a performance bond but stated in the Application that if a bond is required by the Electric Distribution Company (EDC) the Company will secure the bond as required and provide the required documentation to the Commission.

Compliance with Regional Requirements

The Company provided proof of PJM membership. The Company provided a copy of the FERC approval as a marketer.

Financial, Operational, Managerial and Technical Ability

The Company provided confidential financial statements for Agera Energy, LLC as indicia of financial capability under Section 2.1.1.5.1 of the Supplier Rules. The Company also provided proof of a minimum of \$100,000 of assets in excess of encumbrances as required in Section 2.1.1.5.8 of the Supplier Rules in the form of liquid assets, in this case cash and cash equivalents, disclosed on the Company's balance sheet. Staff believes that the financial statements and proof of liquidity show substantial evidence of the Applicant's financial ability to provide services as an Electric Supplier in the State of Delaware.

The Company anticipates acting as a Supplier serving residential, small commercial, large commercial and industrial customers for the sale or purchase of electricity throughout the State of Delaware. The Application states that the Company is presently licensed to sell electricity in Ohio and New York and has applications pending in Connecticut, District of Columbia, Maryland, Massachusetts, Michigan, New Jersey, Pennsylvania, Rhode Island, and Virginia. Staff confirmed that the Company is licensed in New York and Ohio by conducting an internet search of the Secretary of State Websites for the states listed. Additionally, the Company submitted updated information in a supplemental filing on February 20, 2015 that they have since received approval to operate in Connecticut, District of Columbia, New Hampshire, Pennsylvania, Rhode Island and Virginia². Staff has confirmed that the Company is licensed in those states. The Application states that the Company has not been denied approval nor had its authority revoked by any state commission. The Company provided a toll-free customer service telephone number. Staff believes that this information shows substantial evidence of the Applicant's operational ability to provide services as a Supplier in the State of Delaware.

The Application included a summary of the key operating personnel of the Company. Ms. Kathryn Perry, Director of Operations, has 9 years' experience in the energy industry. She has held positions with Glacial Energy, Virgin Islands including management level positions. She was Vice President of Operations and was the main liaison between the Sales Team and executive management. Ms. Perry held other positions where she directed a team of employees who were responsible for contract processing, rate management, quality assurance, and utility transactions. Mr. Phil Spillane,

² The Company submitted additional information in a subsequent filings received February 20, 2015 and April 22, 2015, updating the status of states in which they are currently supplying service. The Company included New Hampshire as a state they had submitted an application and received a license in since the original Delaware application was filed. The applications for Maryland and Massachusetts are still pending as of the writing of this staff memo. The application for Michigan has been withdrawn by the applicant.

Chief Risk Officer, has experience in roles spanning wholesale supply, trading, operations and energy forecasting. Mr. Spillane held management level positions where he assisted with regulatory filings, managed day-to-day power operations for a retail energy provider covering pricing and wholesale supply. Mr. Thomas Frederiksen, Chief Technology Officer, held positions with Glacial Energy, Virgin Islands beginning as a programmer, moving to Vice President of Software Development. He held leadership positions where he led a large team of developers in the overhaul of a billing system. The Company also provided detailed resumes for several other key operating personnel in support of their Application. Staff believes that the Company has demonstrated substantial evidence that its staff has the operational, managerial, and technical abilities to perform as a Supplier in the State of Delaware. Staff performed an internet review of the key operating personnel and found no outstanding issues.

Surety Bond

The Company did not post a surety bond since it does not require Customers to provide a deposit, prepayment, financial guarantee or the like.

Verification of Application

The Application and all subsequent filings were verified by Mr. Nordlicht, General Counsel.

Consent to Jurisdiction

The Company consents to the jurisdiction of the Delaware courts.

Contracts

The Company did provide sample residential and small commercial contracts for Staff to review as a part of the Application. Staff reviewed the contracts and believes that they are consistent with the Supplier Rules.

Statement of Criminal Activity

The Applicant stated that they have not been charged or convicted of any criminal activity nor have any of its principals or corporation offices. An internet review of the Company and its principals revealed no issues.

Public Notice

Agera was advised that, pursuant to Section 2.2 of the Supplier Rules, the Company was required to publish notice of its filing in two general circulation newspapers in Delaware. The Company provided the appropriate affidavits of publication. Notice was published in the Delaware State News on December 27, 2014 and in The News Journal on January 5, 2015. There were no interventions, protests, or comments filed in the docket within the 20-day notice period.

Legal Review

During the review and analysis process and each phase of the request for additional documentation for this Application Staff communicated with the assigned Attorney to ensure that all required documentation requested and received from the Company was in compliance of Delaware law and the Supplier Rules and regulations. Staff submitted this memo for review by the Attorney on April 22, 2015.

Staff Recommendation

Based on Staff's review and analysis of the Application, the Company has satisfied the requirements of the Act and the Supplier Rules. The Company resolved all outstanding issues with Staff and the completed Application supports the Company's request for certification. Staff's review and analysis of the Application submitted by the Company demonstrates substantial evidence of capability to render service based on the Company's financial, operational, managerial and technical abilities. Therefore, Staff recommends the Commission approve the Application.